

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

**Starbucks Corporation d/b/a
Starbucks Coffee Company Store 7356¹**

Employer

and

Case No. 2-RC-22852

Industrial Workers of the World IU/660

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a Hearing Officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its authority in this proceeding to the Regional Director, Region 2.

Upon the entire record² in this proceeding, it is found that:

1. The Hearing Officers' rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated and I find that the Employer, Starbucks Corporation d/b/a Starbucks Coffee Company Store 7356, a Washington corporation with a place of business located at 200 Madison Avenue, New York, New York, operates retail coffee stores. Annually, in the course and conduct of its business operations, the Employer derives gross revenues in excess of \$500,000 and purchases and receives goods and supplies valued in excess of \$50,000 in its New York, New York facility directly from suppliers located outside the State of New York.

3. The parties stipulated and I find that the Petitioner, Industrial Workers of the World IU/660, is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) of the Act.

5. The Petitioner seeks an election in a unit consisting of all full-time and regular part-time baristas employed at Employer's retail store 7356 located at 200 Madison Avenue in Manhattan, but excluding all other employees, professional

¹ The Petition was amended at hearing to reflect the proper name of the Employer.

² Briefs have been filed by the Petitioner and the Employer and have been duly considered.

employees, guards and supervisors as defined in the Act.³ The Petitioner further contends that persons employed in the job classification of shift supervisor are supervisors within the meaning of the Act and should therefore be excluded from the unit.

The Employer contends that the petitioned-for unit is not an appropriate unit for collective bargaining and that the only appropriate unit consists of baristas and shift supervisors in all of the Employer's stores in its downtown New York City region.⁴ The Employer further contends that shift supervisors are not supervisors as defined in the Act and should be included in the unit based on community-of-interest principles.

The Employer's Operations and Corporate Structure

The Employer, through its nationwide chain of retail stores, primarily sells coffee, ready-to-drink beverages, pastries and related products. The Employer has its corporate headquarters in Seattle, Washington, and divides its United States operations into geographical zones and regions. Employer's northeast zone contains approximately 1,100 stores. Within the northeast zone, the Employer has five regions in the metropolitan New York City area.

The petitioned-for store 7356, located at 200 Madison Avenue, is among 50 stores included in the downtown New York City region, which geographically extends from 37th Street and Broadway to the southern tip of Manhattan. The other metropolitan regions are: the midtown New York City region, which includes Brooklyn and parts of Queens; the uptown New York City region, which includes parts of Queens and the Bronx; a New Jersey region; and a Long Island region.

There are three regional vice presidents and seventeen regional directors within the northeast zone. One of the regional vice presidents is responsible for the five regions in the metropolitan New York area and works from the Employer's offices at 330 Fifth Avenue. The downtown, midtown and uptown regional directors are also located at that office. The New Jersey and Long Island regional directors each have separate offices.

The Employer further divides its regions into districts, overseen by district managers. The grouping of stores within a district is usually determined by geographical proximity.⁵

Alex Perez is the regional director for the downtown New York City region.⁶ Perez directs the work of six district managers who also work out of the 330 Fifth Avenue office. Each district manager is assigned responsibility for seven to nine retail

³ The Petitioner neither stated at hearing nor in its brief that it is prepared to proceed to an election in any unit found appropriate by the Regional Director. The Petitioner also has not taken a position on, or proposed, an alternate unit to either the petitioned-for unit or the unit asserted by the Employer.

⁴ Although the Employer suggested at times at hearing that an appropriate unit may encompass other New York City regions, the Employer in its brief does not propose a unit alternate to the downtown New York City region.

⁵ However, this is not the case regarding store 7356; the store is about four miles from other district stores at the southern tip of Manhattan.

⁶ Before becoming regional director, Perez worked for six years in the midtown New York City region as a store manager and then a district manager.

stores within the district. The manager for the Employer's district that includes store 7356 is responsible as well for seven other stores.

Perez determines the hours of operations for each store within his region, which are, with few exceptions, 6:00 a.m. to 10:00 p.m. A regional design manager is responsible for the physical layout of each store, and each retail store in the three New York City regions has a similar physical layout. The Employer leases its stores, and a regional asset manager is responsible for dealings with landlords. The Employer's brewing equipment is similar throughout the country, and its computer terminals, software and email system are used nationwide. Should store equipment need repair, an employee may call the Employer's central facilities and service center. A regional facilities manager, located at 330 Fifth Avenue, is then responsible for effectuating the repairs.

Perez employs a cleaning contractor to clean the stores in his region. He also arranges, where necessary, an armored car service to make regular pickups of cash proceeds from each store to be deposited in a bank account shared by a cross-region grouping of stores. The Employer's store-level cash management policies are applied nationwide.

Perez also develops the sales plan for each store within his region. Although the inventory of non-food retail products varies from store to store, beverages, pastries, as well as product prices, are similar or identical within the downtown and midtown regions. Perez and the regional product manager take care of product purchasing and determine the "sales mix" in each store. Regional management delivers quarterly marketing plans to each store. Perez stated that "on a weekly basis" stores call other stores within the region to acquire depleted stock.

The Employer's job description for district managers states that most of the district manager's time should be "spent developing store management talent, overseeing the district's store management workforce, making management staffing decisions, ensuring district-wide customer satisfaction and product quality, managing the district's financial performance, and managing safety and security within the district."

In particular, the district manager has responsibility in "develop[ing] the management team" and "motivating and supporting the store management team . . . to develop and implement action plans . . ." The district manager also "plans, identifies, communicates and delegates key responsibilities and practices to the store management team to ensure smooth flow of operations within the district," and "reviews store environments and key business indicators . . . in order to provide coaching to the store management team to take action and achieve operation goals." The district manager must also "ensure adherence to applicable wage and hour laws for nonexempt partners⁷ and minors," and use financial reports "to identify and address trends and issues in district performance."

With regard to "Partner Development and Team Building," the district manager, among other things, "manages district-wide store management team by regularly conducting performance assessments, providing feedback, and setting challenging goals to improve partner performance."

⁷ The Employer internally refers to all its employees as "partners."

The Employer's Personnel Policies and Functions

Human Resources Personnel

The Employer creates and implements personnel policies at several corporate levels. Below the decision making level in the Seattle headquarters, the Employer assigns partner resources directors to its zones. Scott Milford is the Employer's partner resources director for the northeast zone. Milford oversees regional resources managers and associates, as well as recruiters and senior training specialists. One partner resources manager and one partner resources associate, who both work at the 330 Fifth Avenue office, are assigned to cover all three New York regions (downtown, midtown and uptown). The training specialist also covers these same regions.

According to Milford, the partner resources manager is generally responsible for "staffing . . . counseling, coaching, performance management, training and development." The resource associate is, among other things, responsible for "the preliminary investigations on all of [the partners'] compliance calls."⁸ Both help to plan agendas for employee open forum events. Partner Resources Manager Nicole Wiede⁹ described her job as "work[ing] with the Regional team, District Managers, Store Managers, Regional Directors and Partner Resources team to insure staffing levels, coach Partners through [employee career] development plans, progressive discipline and work through grievance processes on the store level."

Policy Statements, Wages and Benefits

Job descriptions and classifications are developed in the Seattle headquarters and used nationally. The Seattle headquarters also produces a "Starbucks Coffee New Hire Kit," which includes a 96-page booklet entitled "Starbucks Coffee Partner Information & New Hire Paperwork" and a sixteen-page booklet entitled "Starbucks Standards of Business Conduct." These documents, along with a pamphlet entitled "Starbucks Anti-Harassment Policy," are given to all new management and non-management employees throughout the country, and the policies contained in these documents are applicable to both hourly¹⁰ and management employees.

Baristas and shift supervisors, including those in the petitioned-for store, are therefore covered by nationwide policies regarding: equal employment opportunity, harassment and discrimination, alcohol and drug use, conflict of interest, confidentiality, tip income, tip reporting, corrective action, internal transfer, attendance, rest and meal periods, personal days, vacation leave, disability leave, family and medical leave, bereavement leave, jury duty, military leave, voting leave, personal leave, dress code policy, personal grooming, smoking, bulletin boards, and telephone and email use.

Regional Director Perez stated that he determines the wage rate for his region and that the base rate for baristas is the same in the downtown, midtown and uptown

⁸ Employer's toll-free compliance number is a method by which store-level employees may redress grievances. It is discussed in detail *infra*.

⁹ Wiede is presently the partner resources manager for the New Jersey and Long Island regions. Approximately four years ago she covered the downtown New York City region for approximately six months.

¹⁰ Hourly store-level employees comprise baristas and shift supervisors.

regions. However, Milford testified that the partner resources team researches the market rate, Milford reviews their recommendation, and ultimately the rate is determined by Seattle headquarters.

Health insurance benefits, as well as the stock participation plan and 401K plans, are developed and implemented nationally and are generally applicable to hourly and management employees.¹¹ However, only those classifications above and including assistant managers receive the flexible spending account, free long-term disability and automatic life insurance. The Employer makes disability and life insurance available to hourly employees only for purchase.

Hiring

Regional Director Perez testified that he determines the number of staff at each store in his region, and that most new employees are recruited at “open house events.” These events take place at 195 Broadway, a retail store with an adjacent training facility. A regional recruitment manager, who works out of the 330 Fifth Avenue office, arranges newspaper, in-store and outdoor advertising for such an event. A district manager, as well as store managers who have a need for new hires, attend the open house events. Perez also occasionally attends. At the event, an applicant for a barista or shift supervisor position is interviewed by the district manager, as well as two or three different store managers. Desired applicants are then hired at the event; the district manager ultimately determines at which store within his or her district the new employee works.

Perez testified that if someone asks to apply for a position at a retail store, store employees hand the person an application and direct the applicant to attend an open house event. However, Barista Daniel Gross¹² testified that employees handing out applications to walk-ins direct them to return to the store with the completed application; ultimately, the application is given to the store manager.

However, Employees may also be hired at a store. Ideally, three interviews are conducted in this case: by the hiring store manager, a store manager from another store, and the district manager. The hiring store manager should notify the district manager of the first interview. If a store manager wishes to hire the applicant, the manager performs reference checks and then discusses the person’s qualifications with the district manager, who gives his or her recommendation.¹³

¹¹ Milford testified that any differences in nationally-established policies and benefits are attributable to variances in state laws.

¹² Gross has been a barista at store 7356 for over a year, working between ten and 37.5 hours per week.

¹³ Partner Resources Director Milford described the role played by the partner resources manager and associate in hiring employees. They attend partner planning meetings, and “give coaching and counsel to store managers, district managers and regional directors in setting up an appropriate hiring strategy within the region,” such as managing records for new hires and increasing the number of open forums.

Training

The Seattle headquarters establishes and develops a core training program applicable nationally to all employees. Before a new hire is first sent to his or her home store, the Employer trains the employee in the Employer's general mission, culture and customer service theory. In New York, the Employer maintains three regional training facilities at 195 Broadway, 31st Street and Seventh Avenue, and 330 Fifth Avenue.¹⁴

The next step is in-store training. The Employer uses a standard document entitled "Starbucks New Partner Training Plan," which divides the training into nine "shifts," comprising nineteen hours of training and sixteen hours of practical shift coverage. At the store,¹⁵ employees are trained to prepare beverages and use the equipment by "peer coaches," who may be baristas, shift supervisors, assistant managers or store managers.¹⁶ New employees are certified by the peer coach upon completion of each training module. The district manager signs the document once all shifts are completed. After three months, the new employee is subject to an informal "check in" process confirming the success of the employee's training.

Barista Gross testified that, after he was hired, he was interviewed by his store manager, Beth Jameson. Upon hiring, Gross attended a five-hour training session at 330 Fifth Avenue, but the vast majority of his training was in-store.¹⁷ Gross' first day was spent with Jameson and he received the new partner training plan form. Thereafter, Jameson and the assistant store manager directed Gross' training. Gross witnessed no one in management above store management participate in his training.

The Employer provides specialized training for shift supervisors apart from the standard new partner training.¹⁸ Completion of each component of the shift supervisor training requires signature by the store manager; the district manager signs after the entire training is completed. Wiede testified "the document is prepared by the Store Manager in conjunction with the District Manager."

Scheduling

Employees hand to the store manager an "available hours sheet" which the manager uses to input information into a computer using software called Automated Labor Scheduling. The store manager may also input other employee-specific information. For example, Barista Gross testified that his store manager input his request for at least twelve hours off the schedule between shifts.

¹⁴ Partner Resources Director Milford described the role played by the regional partner resources team in training. The team "conducts HR classes for the management team" and "review[s] periodically the training program."

¹⁵ According to Perez, this store level training may not always occur at the store where the new employee is permanently placed.

¹⁶ The in-store training also includes training in ergonomics and safety, and, as part of Employer's ongoing training, the district manager ensures that the store manager conducts monthly safety meetings with employees.

¹⁷ Perez described the pre-store training program as approximately 24 hours long.

¹⁸ Shift supervisor training is discussed in detail *infra*.

Each week, the software generates the employees' schedules, including the number and time of breaks. The store manager then handwrites the primary positions and "slide positions" to which employees are assigned, as well as cleaning assignments. The schedule may also be altered with handwritten changes. For example, the store manager may write in the schedule of an employee temporarily transferred to the store. Gross testified that he had been informed by his assistant store manager that store managers often "override the computer to get the result that they want."

Perez testified that he provides a budgeted amount of overtime for the district managers, and that, during his tenure as regional director, he has probably approved some overtime.

Temporary Transfers

The Employer has a "borrowed partner" procedure, which Regional Director Perez described as a practice of temporary transfers of hourly employees. The practice, which is voluntary, is used in each metropolitan New York City region. If an employee wishes to pick up an extra shift at another store, the Employer provides, in the back of the store, a list of contact numbers for the stores in the downtown New York region, as well as shift availability in other stores. The employee calls the store and asks about the availability of shifts. Wiede testified that the employees then "basically assign themselves to whatever shift is available." Perez testified that the store manager at the other store must approve of the borrowed partner working the shift; however, Wiede testified that any employee, including baristas and shift supervisors, may approve the shift coverage. Once at the new store, the barista or shift supervisor punches in for work in the same way as at his or her home store, and needs no store-specific training.

Summaries of partner borrowing over the past four quarters show that 32% of hourly employees (baristas and shift supervisors) covered at least one shift in stores other than their home store, within the downtown New York City region, for an average of twenty hours per quarter. The summaries further indicate that an average of ten hourly employees, who do not work at store 7356, covered at least one shift at store 7356 for an average of about seventeen hours per quarter. With regard to employees whose home store is store 7356, an average of six employees (about 45% of the hourly-employee complement at the store) gained an average of about seventeen hours per quarter working at other stores within the downtown New York City region.¹⁹

¹⁹ Wiede testified that partner borrowing happens "frequently." Perez testified that the process of picking up barista shifts in other stores is a "daily" occurrence. Furthermore, Perez testified that "often" the Employer directs an employee to pick up a shift at another store, but could not provide specific evidence as to the frequency of such mandatory transfers in and out of store 7356. Perez also did not identify reasons for directing employees to work elsewhere other than because an employee is promoted. Perez added that shift supervisors pick up shifts in other stores "very frequently," and that "most of the time" shift supervisors pick up extra shifts as baristas, and do so "on a weekly basis." Shift supervisors receive their usual shift supervisor wage rate even if working as a barista. Wiede testified that a barista "is likely to work" as a

Permanent Transfers

The Employer describes in its partner information booklet its transfer policy and attendant eligibility requirements. The Employer also maintains a website devoted to job openings. Perez stated that the request to transfer is given first to the employee's home store manager, who in turn sends it to the district manager. Ultimately, the transfer decision is made by the district manager if the employee meets the eligibility requirements. Wiede testified that over the past four quarters, approximately 17% of baristas and 28% of shift supervisors were permanently transferred from one store to another within the downtown New York City region.²⁰ These transfers were voluntary and made pursuant to the employee's request.

Employee Evaluation and Performance Awards

The new partner information package states that an employee's manager will provide the employee with regular performance evaluations. Perez testified that the Employer gives the employee a standardized performance review form. The employee writes a self-evaluation and gives the form to the store manager, who then "conducts a performance assessment" of the employee. The store manager may seek assistance from the region's partner resources manager. The district manager approves the assessment. The Employer assigns to the assessment a numerical rating that determines wage increases.

Partner Resources Director Milford explained the role that the partner resources manager plays in evaluating hourly employees. He stated that they "give coaching, counseling," "input on performance documents" written by store managers, and help to store managers in "craft[ing] the message that that Store Managers and [district managers] want to give their Partners."

Barista Gross described his first evaluation. He stated that Store Manager Jameson sat down with him, handed him an evaluation and asked for his opinions. Jameson completed the form. A few days later, they reviewed the evaluation again together and Jameson adjusted some scores upward "on the spot." Gross was told by Jameson that the evaluation and "her monitoring [his] performance" would be the basis of Gross' raise. Gross witnessed no one else participate in the process of his evaluation. Gross stated that his second evaluation process was the same except that he did not complete his self-evaluation. Gross testified that it was his store manager who informed him of his raises.

The Employer distributes a Mug Award at the store level; and Partner of the Quarter Award and Partner of the Year Award are determined by Perez regionally. Employer also maintains a regional incentive plan by which store-level employees may receive cash awards for highest store sales. Barista Gross, along with the store

borrowed shift supervisor. Gross testified that "once in while" he has seen an employee pick up a shift at his store.

²⁰ This information was not submitted as documentary evidence. Wiede also did not know precisely when these transfers took place, in terms of calendar quarters or otherwise, during the one-year period.

manager, developed an award specific to store 7356 with \$50 cash prizes: a total espresso sales award and a total pastry sales award.

Discipline and Discharge

The Employer's partner information package describes its "corrective action" policy. It lists "serious misconduct situations" and states that "[i]n cases when termination is warranted, a manager may choose to first consult with his/her manager or with the Partner Resources department" and "[i]n cases where immediate and severe discipline is warranted, the manager may choose to first consult with his/her manager or with a Partner Resources manager/generalist."²¹ The information package also describes the wages and benefits to which an employee is entitled upon termination of employment.

Perez explained that policy infractions are recorded at the store-level by the store manager, who may seek assistance in the procedure from the district manager or the partner resources manager. Perez equated the documentation on the infraction to a written warning. The store manager may recommend disciplinary action, but no actual action may be taken without approval by the human resources manager, partner resources manager or Perez.

A store manager may also recommend that an employee be discharged. In that event, the Employer directs the store manager to send the employee's file to the district manager for review by both the district and partner resources managers. Perez testified that management may or may not accept the store manager's recommendation, and that the Employer does not give a store manager authority to fire an employee without approval from the district manager and the partner resources manager. However, Perez testified that store managers have terminated employees without the approval of the district manager and some of the terminations have been overturned.²²

Barista Gross testified to having been disciplined several times. The first two incidents involved Gross wearing a shirt that was part of an old promotion and making a drink in the wrong order. Both times, the assistant manager told Gross that he was not complying with policy. No other manager was involved in these conversations and no written warnings were created. Gross also described warnings for cash register shortages. The assistant manager gave Gross what was called a verbal warning in writing. When he was short for a second time, Gross received a written warning completed by the store manager. At that time, the assistant manager told Gross that his next warning would be final. Gross testified that he has never witnessed nor was ever informed that a district manager would be involved in the discipline.

²¹ In his testimony, Perez interpreted "manager" to mean store manager and district manager.

²² Partner Resources Director Milford testified that the partner resources team "are frequently brought in to review performance issues within the stores," "will make recommendations based on their interpretation of policy" and "will give . . . feedback back to the District Manager and the Store Manager." The team may "in some cases recommend discharge and/or strongly urge discharge if it's a direct violation of policy . . . Their role is to interpret that policy [and] they can also overturn terminations that are conducted in the field after careful review of the circumstances."

Employee Grievances

The Employer establishes in its partner information booklet certain “problem solving” procedures. The employee “should talk directly to their manager when a disagreement or conflict occurs,” and, if the problem involves “an immediate supervisor,” the employee should to seek redress at the next management level above the supervisor.

Perez testified that a barista or shift supervisor may redress grievances by either talking to the district manager or the partner resources manager, or by calling a toll-free “compliance number” posted at each store. However, it appears that calling the toll-free number results in the employee being referred to the regional partner resources manager. Partners may additionally “speak to their supervisor, their store manager,” “go directly to their regional director” or “go directly to” the regional partner resources team. Milford clarified that he interprets “supervisor” in this case to mean the store manager or district manager. Milford further stated that the regional partner resources team “frequently” handles issues raised by hourly employees, and that human resource issues typically do not reach the metro region or northeast zone management level.

Promotion

Nationally, the Employer calls its promotion procedure a “partner development plan,” which is used to chart employee skills acquisition. The employee and the store manager fill out a standard form associated with the development plan. Perez testified that, generally, these plans for baristas are maintained by district managers and, for shift supervisors, by district managers and regional management.

An employee desiring a promotion must first express his or her desire to the store manager, who in turn discusses the request with the district manager. A store manager may recommend to the district manager that an employee be promoted, but the district manager may or may not accept the recommendation. When a barista is promoted to shift supervisor, the Employer typically places him or her in another store in the region for an easier transition. Perez testified that he makes the decision to promote shift supervisors to assistant managers by meeting regularly with district managers. The promoted assistant manager is typically placed in another store within the region.

Barista Gross testified that Store Manager Jameson told Gross that “she wanted to develop [Gross] within the Barista position and potentially above.” As a result, Jameson filled out a performance development plan form for the first quarter of 2004. Gross witnessed no one else in management participate in his development plan.²³

²³ Partner Resources Director Milford described that the partner resources team are involved in Employer’s partner development program by attending partner planning meetings, “making recommendations based on . . . feedback that they have gathered on specific partners,” and making “recommendations on development plans and/or specific course of development that a Partner can take.”

Interaction Between Regional and Store-Level Personnel

Perez testified that hourly employees are informed of the region and district in which they will work when they are first hired, and that information is repeated in store postings and documents issued by Perez. Perez stated that he visits the stores about once a month and conducts marketing tours of the stores. During Perez's nine-month tenure as regional director, he estimated to have visited store 7356 approximately 20 times.

Perez further testified that the district manager for Store 7356 "approximately visits the store on a weekly basis," or, in total, five to ten times a month. The district managers also visit stores once a month for a Manager Business Development Day, which is an eight-hour structured review of all facets of the store's business. This day results in two to four subsequent visits by the district managers to follow-up on action plans developed on the Development Day. Regional management also does half-hour-to-hour-long "tours" of the stores, which may be prompted by a store manager or employee request.

Perez also described meetings that occur at the 330 Fifth Avenue office. Each district manager holds a monthly business planning meeting among the store managers in his or her district. The store managers and district manager also meet once a month to specifically discuss the performance of hourly employees. District managers hold quarterly meetings at which store managers make presentations of their achievements. Although Perez testified to mandatory meetings, during Perez's nine-month tenure as regional director, there has not been a mandatory region-wide meeting. Gross testified that he has never been invited to a region-wide meeting of baristas.

The Employer engages in "social responsibility programs" on the national and local levels. Perez described an Earth Day event where the Employer invites its employees to clean public spaces. Perez and his regional marketing manager coordinated the region's participation in this event. Perez identified a store 7356 manager as a "green team action leader" responsible for organizing employees to participate in the region's environmental endeavors.

Perez described certain region-wide events to which baristas and shift supervisors are invited. Twice a year the region holds an open forum where employee attendance is voluntary. At this event, awards are presented, and employees may converse with regional management and see new products and programs. Perez also described the Employer's support of local community organizations such as the Downtown Business Alliance for New York City, the River Arts Festival and the TriBeCa Film Festival. Perez coordinated his region's participation in these events.

Partner Resources Manager Wiede described her interaction with hourly employees in that she "on a daily basis . . . influenced the interactions that happened between the District Manager team and the Partners in the store . . . through . . . partner planning and succession meetings, strategic meetings, the grievance process, the process of Partner development and training within our stores."

Barista Gross testified that the Employer had never informed him of the Employer's zones, regions and districts. Gross has not attended meetings at his store with anyone outside the store-level personnel. Gross further testified that he has seen Perez twice at the store and a prior district manager twice at the store. Gross attended

one meeting held by the prior district manager outside the store. However, in the past two months, Gross has seen the new district manager about a dozen times at the store, which Gross attributes to the unusual circumstance of hiring concurrently a new store and district manager.

Job Duties of Store-Level Personnel

The Employer's store-level employee job descriptions and classifications are the same throughout the country. These positions are: store manager, assistant store manager, shift supervisor and barista. Based on customer volume, a store in the downtown New York City region may have between four and 40 baristas, and between three and four shift supervisors. All stores have one store manager. About fifteen stores in Perez's region do not have assistant managers. At store 7356 are presently employed thirteen baristas, four shift supervisors, two assistant managers and one store manager. Barista Gross testified that only one shift supervisor, one assistant manager and one store manager worked at the store prior to the petition filing date

Store Managers and Assistant Managers

Store managers and assistant managers are salaried employees. Employer's written job description for store managers, in the section entitled "Job Summary and Mission," states that the store manager:

is required to regularly and customarily exercise discretion in managing the overall operation of the store. In particular, a majority of time is spent supervising and directing the workforce, making staffing decisions (i.e., hiring, training, evaluating, disciplining, discharging, staffing and scheduling), ensuring customer satisfaction and product quality, managing the store's financial performance, and managing safety and security within the store.²⁴

The store manager has further responsibilities in "developing action plans and directly motivating and instructing the store team to implement and meet" business goals. The store manager also "plans, identifies, communicates and delegates appropriate responsibilities and practices to store partners to ensure smooth flow of operations." The store manager in addition must "identify problems, concerns, and opportunities for improvement to provide coaching and direction to the store team" The store manager also "monitors and manages staffing levels to ensure partner development" and must "identify and prioritize communication and regularly use[] discretion to filter communication to the store team."

The partner handbook also identifies functions of an employee's "manager," which Perez interpreted to mean both the store manager and the district manager. The handbook explains that a manager provides employees with their "most important working relationship." A manager also has responsibility, after an employee's first 90

²⁴ With respect to these responsibilities, Perez emphasized that store managers do not "enforce" the policies described here, but rather merely "exercise discretion" with respect to them.

days, to “offer [the employee] feedback about [the employee’s] performance” and “evaluate [employee] progress, set goals, and determine additional training needs.” Therefore, the handbook states that the manager “will provide [the employee] with a performance evaluation at regular intervals . . .”

The store manager has some responsibilities that are similar to the district manager’s described above, but on a store-level scale. Both the district and store manager ensure adherence to wage and hour laws; and both district and store managers “[e]nsure[] partners adhere to legal and operation compliance requirements.” However, although both the district and store managers have responsibility for “regularly conducting performance assessments, providing feedback, and setting challenging goals to improve partner performance,” and both “[m]anage[] ongoing partner performance using performance management tools to support organization objectives,” the district manager’s performs these tasks with respect to “district-wide store management,” whereas the store manager covers only “store partners.”

Similarly, whereas the store manager “[u]tilizes and demonstrates effective management principles and practices to create and maintain a successful store team resulting in an environment where partners are valued and respected,” the district manager is charged with these responsibilities only with respect to the “team of store managers.”

Regional Director Perez testified that store managers have no responsibility in the following areas: determining the number of employees employed at a given store;²⁵ determining or varying wage rates for hourly employees; paying bills for rent, utilities or product inventory; or varying the dress code. Although Perez stated that store managers have no responsibilities in purchasing product or determining sales mix in each store, the store manager does determine product quantity needs. Perez further stated that store managers have responsibilities in sales planning and are responsible for cash management.

Partner Resources Director Milford testified that if a barista needs to change a rest or meal break, it is the store manager who resolves the dispute. Similarly, if a barista requests a vacation or leave from the store manager, it is the store manager who would grant or deny the leave “with influence by the District Manager.” Barista Gross testified that the store manager decides whether or not to grant an employee’s request for leave after the employee, with ample notice, writes the time off he or she needs on a calendar in the back of the store.

The job description for assistant managers is similar to that for store managers but more circumscribed. The assistant manager “provides direction to partners during their shift,” and “[a]cts as coach and mentor to partners by using discretion in assessing performance, providing feedback and coaching to improve partner performance, and effectively recommending employment decisions to store manager.” The assistant manager shares with the store manager responsibilities for conversing with customers to assess their needs, and for analyzing and addressing store needs by using Employer resources external to the store. The assistant store manager also “[s]upports store manager in implementing company programs by working directly with shift team to execute action plans . . .”

²⁵ However, Perez explained that the store manager manages the predetermined staffing levels together with the district manager.

Shift Supervisors and Baristas

Both baristas and shift supervisors are hourly employees and receive the same level of benefits. However, shift supervisors are paid at an unspecified higher hourly rate.²⁶ Both barista and shift supervisors are required to punch in by entering an individual number in the store manager's workstation computer. At the end of the week, tips are allocated equally among baristas and shift supervisors according to the Employer's tip policy. No other persons in the store-level classifications receive or share tips.

According to Regional Director Perez, baristas and shift supervisors both serve customer needs, prepare beverages and operate the cash registers. However, shift supervisors have the additional responsibility of directing baristas ("deploying partners") to work at the various stations, which include the cash register, espresso station, the handcrafted beverage station and the blended beverage station. Partner Resources Manager Wiede explained that the "main difference" between baristas and shift supervisors "is that a Shift Supervisor is trained on how to interpret the schedule that was created by the automated labor system, and how to deploy Partners to the appropriate responsibilities in the store."

However, the Employer's written job description for shift supervisors shows that they have the same general responsibility as assistant managers. The Job Summary and Mission for both positions begins: "This job contributes to Starbucks success by assisting the store manager in executing store operations." By comparison, the barista job summary begins: "This job contributes to Starbucks success by providing legendary customer service to all customers."

The job summary for shift supervisors further describes that "[t]his job deploys partners and delegates tasks so that partner can create and maintain the Starbucks Experience for our customers." By comparison, the barista job summary states that the job "creates the Starbucks Experience for our customers by providing customers with prompt service, quality beverages and products, and maintaining a clean and comfortable store environment."

The job descriptions reveal further differences between baristas and shift supervisors regarding their "key responsibilities." Although both baristas and shift supervisors help with new partner training through positive reinforcement and "coaching" of coworkers, the shift supervisor additionally must "provide[] feedback to store manager on partner performance during shift." Furthermore, unlike baristas, the shift supervisors should "develop[] positive relations with shift team by understanding and addressing individual motivation, needs and concerns," and, unlike baristas, the shift supervisor must also "[f]ollow[] up with baristas during the shift to ensure the delivery of . . . customer service" Furthermore, unlike baristas, the shift supervisors are responsible for "[e]xecut[ing] store operations during scheduled shifts," "[o]rgani[z]ing opening and closing duties as assigned," and "[f]ollow[ing] all cash management and cash register policies and ensure proper cash management practices are followed by shift team."

²⁶ The base pay for baristas is \$7.25 per hour; the record does not contain the shift supervisor hourly rate.

Shift supervisors require additional training, which is detailed in a document entitled “Starbucks Shift Supervisor Training Program.” The two-to-four week program is divided into nine “blocks” which do not appear in the new partner training plan used to train baristas. These blocks are: “Shift Supervisor First Impressions,” “Supervisory Skills Workshop,” “Coffee and Food Operations,” “Store Safety and Store Inventory,” “Register and Cash,” “Store Equipment,” “Practical Experience,” and “Certification.” The topic within the practical experience blocks is entitled “Running a Shift.”

Partner Resources Manager Wiede explained that the supervisory skills workshop “is basically a communication class that talks about how to communicate and coach partners in terms of employment and overall store operations.” Furthermore, the “running the shift” block:

covers how to read the deployment roster that's been prepared for the week by the Store Manager and how to interpret what's on there in order to deploy Partners appropriately, understanding the codes that are utilized on there when is [sic] appropriate time using the line charts to administer breaks in conjunction with what the system had told us is the appropriate break time.

Only store managers, assistant managers or shift supervisors can run shifts, and a shift supervisor may run a shift even if the assistant and store managers are present. Generally, the shift supervisors are scheduled so that there is always someone covering deployment of the baristas.

Barista Gross testified that a shift supervisor who is running a shift will write the baristas’ station assignment on a list of employees for each day. As these assignments change frequently throughout the day, the shift supervisor will communicate these changes to the baristas. The shift supervisors may also, on their own initiative, direct baristas to other stations or tell baristas when to “slide” to other duties, such as cleaning. The shift supervisor will also tell employees when to take their 30-minute meal break. Barista Gross stated that the computer-generated break schedule “is hardly ever honored,” and it is the responsibility of the shift supervisor to tell the barista when to take meal breaks. Because the ten-minute breaks are not computer generated, the shift supervisor will tell baristas when to take those breaks and can deny a break request. Wiede testified that administration of breaks requires the shift supervisor to monitor a clock or lapel timer “to say at such and such a time so and so goes on break as a reminder of time check.” Wiede added that “watching the clock” can be performed by any store-level employee. Wiede further testified that it is the shift supervisor’s responsibility to tell employees to come back from break if they are late.

In those stores with no assistant manager, or in the instances where both the assistant and store manager are not on duty, the shift supervisor takes on some of the managers’ responsibilities.²⁷ In these circumstances, shift supervisors acquire the store manager’s authority with regard to refusing breaks. Shift supervisors also reconcile cash and deposit it in the safe when no store or assistant manager is on duty.

²⁷ The record does not contain evidence on the amount of time during which neither store nor assistant managers are present.

Perez testified that both baristas and shift supervisors may open and close a store. However, shift supervisors may set the alarm and baristas cannot. Gross testified that only store managers, assistant managers, and shift supervisors can open and close a store, because only persons in these positions have the alarm code and necessary keys. Store managers, assistant managers and shift supervisors have keys to the store safe and drop box, while baristas do not. Gross stated that shift supervisors have responsibility for transferring money from the safe to the next shift.

Shift supervisors may input data into the partner communication log and baristas cannot. Shift supervisors, like store and assistant managers, have an authorization code when the computer blocks an employee from punching in, as well as a password to input the amount which a barista's register is "short" or "over." If an employee does not show up for a shift, the shift supervisor informs the store manager by telephone and then uses internal procedures to find a replacement. Shift supervisors can also receive customer complaints and give out a "service recovery coupon."

Perez testified that shift supervisors have no responsibility in the following areas: interviewing or hiring employees; determining employee schedules; determining or recommending wages for baristas; the transfer, layoff or recall baristas; evaluating or recommending promotions for baristas, nor disciplining or firing baristas. Both barista and shift supervisors may document incidents that occur in the store. However, shift supervisors, unlike baristas, may document employee infractions of policy for referral to the store manager.

Gross testified that shift supervisors may give conduct quality assurance tests in which the shift supervisor, using a standard form, measures the weight and temperature of several drinks prepared by a barista. Gross also described an instance in which a shift supervisor told him to re-clean a pastry window because he had not thoroughly cleaned it.

Analysis

Single-Facility Issue

As a general rule, a single-plant unit is presumptively appropriate, unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated that it has lost its separate identity. *Cargel, Inc.*, 336 NLRB 1114 (2001); *J&L Plate, Inc.*, 310 NLRB 429 (1993). To determine whether the presumption has been rebutted, the Board considers such factors as: centralized control over daily operations and labor relations, including the extent of local autonomy; similarity of skills, functions, and working conditions; degree of employee interchange; geographic proximity; and bargaining history, if any. *New Britain Transportation Co.*, 330 NLRB 397 (1999). Furthermore, "the party seeking to overcome the single-site presumption must show that the day-to-day interests of the employees at the sought locations have merged with those employees of the other locations." *Renzetti's Market, Inc.*, 238 NLRB 174, 175 (1978). Analyzing the facts here in light of the applicable criteria, I find that the Employer has not rebutted the single-facility presumption.

The record reveals that the Employer's business operations are highly integrated and administratively centralized at both national and local levels. The vast majority of

Employer's personnel policies are developed and uniformly disseminated nationally by its corporate headquarters in Seattle. This fact is most evident in the Employer's new hire booklet, training programs, evaluation forms, job descriptions, and employee development documents. Wage rates and benefits are also uniformly applied nationwide after consideration of the regional employment markets and state laws. In the New York City area, the Employer's key human resources personnel cover three of the five New York metropolitan regions and operate from a centralized facility at 330 Fifth Avenue. With regard to other resources and assets, the Employer, with input and/or approval from Seattle, develops and uniformly implements policies and procedures specific to the entire New York metropolitan area with regard to purchasing, inventory, advertising and pricing, as well as equipment and facilities maintenance.

However, the Board considers "most relevant" the extent of autonomous supervision at the petitioned-for store. In other words:

whether or not the employees at the sought store perform their day-to-day work under the immediate supervision of one who is involved in rating their performance and in affecting their job status and who is personally involved with the daily matters which make up their grievances and routine problems.

Renzetti's Markets, 238 NLRB at 175. See *New Britain Transportation*, supra at 397 ("[c]entralized control over personnel and labor relations alone . . . is not sufficient to rebut the single-location presumption where the evidence demonstrates significant local autonomy over labor relations.") In this regard, the Employer here vests store-level management with significant supervisory autonomy.

The above-quoted job description for store manager plainly spells out the nature of the store manager's autonomy. It makes clear that the Employer vests the store manager with, among other responsibilities, discretionary authority in decision making regarding important matters affecting employees: "hiring, training, evaluation, discharging, staffing and scheduling." As described above, the Employer's handbook amplifies the store manager's autonomy while announcing to employees the store manager's authority in these areas.²⁸

The record testimony further bears out the autonomous supervisory authority described in the Employer's personnel documents. The Employer gives the store manager an essential role in the hiring process at the store, district and regional levels. The store manager interviews candidates in several contexts and recommends them for hire. Although ultimate hiring approval comes from regional management, the store manager's significant involvement is evidence of supervisory autonomy. See *Penn Color, Inc.*, 249 NLRB 1117, 1119 (1980) (manager's significant involvement in hiring process supports single-unit finding even though ultimate authority in these matters

²⁸ Although Perez stated that references to "manager" in the handbook are to both store and district managers, the district manager's job description states several times that the district manager's responsibilities are not concerning store-level personnel, but rather store management. In any event, even if the manager described in the handbook is construed as both the district and store managers, this construction does not detract from the authority and functions which the handbook attributes concurrently to the store manager.

rests with upper management); *Renzetti's Market*, 238 NLRB at 175 (finding single unit where store manager, among other things, "participates in the interviewing process").

Furthermore, after hiring, store management oversees the hands-on training of hourly employees after the centralized training is completed. See *New Britain*, 330 NLRB at 398 (although new hire training first occurs outside facility, dispatcher's performance of subsequent in-facility training evidences local autonomy).

Although employee schedules are generated by computers in the first instance, the store manager has control over inputting employee scheduling requests, determining specific assignments within shifts and adjusting the schedule based on day-to-day store-specific needs. The store manager also has the authority to change a rest or meal break and grant or deny requests for vacation and leave. Indeed, the store employee's only day-to-day contact regarding any scheduling matter is store-level management.

The record further shows that, especially from the employee's perspective, the employee's evaluation is primarily a one-to-one process between the employee and store-level management. There is evidence that the store manager meets with employees, discusses their performance in depth, may alter the evaluation based on these discussions, and personally completes the evaluation. Although the district manager may ultimately sign the evaluation, the Employer affords the store manager discretion throughout the evaluation process to seek or not seek advice from the district manager or partner resources personnel. The record demonstrates that it is the relationship between the employee and store manager that gives the employee a meaningful opportunity to influence the evaluation before it reaches the next level of management. The recommendations or advice from the district manager and partner resources teams to the store manager do not detract from that relationship. *Renzutti's Markets*, 238 NLRB at 175 (goal of single-facility determination is in part to find whether employees are "under the immediate supervision of one who is involved in rating their performance").

Employee career development is also a matter which store management tends to in a one-to-one relationship with the employee. As with other matters, the store manager may discuss career development with the regional manager and the ultimate decision to promote is made by regional management. However, the store manager completes the development plan form, which provides the basis for ongoing discussion between the store manager and the employee as the employee acquires the necessary skills for promotion. The Employer's written policies and job description further demonstrate that store management has the responsibility to see to the ongoing, day-to-day, career development of store employees.

The Employer also affords the store manager discretion with regard to discipline and discharge. The store manager has the independent authority to prepare written warning forms for hourly employees who violate the Employer's policy, and the Employer gives the store manager the freedom to choose whether or not to discuss the matter with the district manager or partner resources team. See *General Mills Restaurants, Inc., d/b/a Red Lobster*, 300 NLRB, 908, 909 (general manager's authority to give and memorialize verbal discipline without prior approval is evidence of supervisory autonomy); *New Britain*, 330 NLRB at 399 (evidence of dispatchers' independent handling of minor discipline and responsibility for carrying out employer's

decision on formal discipline evidence of supervisory autonomy). In any event, Regional Director Perez testified that store managers have, in some instances, terminated employees.²⁹ *Renzutti's Markets*, 238 NLRB at 175 (goal of single-facility determination is in part to find whether employees are “under the immediate supervision of one who is involved in . . . affecting their job status”).

The Employer's personnel documents and the record testimony further demonstrate that the store manager has the authority to hear and correct employee grievances. The Employer does provide other avenues outside the store for employee complaints, and the district manager or partner resources team may become involved in both advice giving to the store manager and/or investigating grievances. However, the evidence shows that store-level management handles complaints within the store in accordance with the Employer handbook, which encourages both employee and store management to resolve disputes at the store level.³⁰

Based on the foregoing, I cannot conclude, as the Employer asserts, that sole authority over key store-level supervisory matters are found in the district manager, partner resources team or regional director for the downtown New York City region. The testimony of the Employer's witnesses indicates that certain ultimate supervisory decisions require approval from levels above the store manager.³¹ Nevertheless, there is ample evidence in the record to conclude that, on a day-to-day basis, store management does exercise significant supervisory autonomy and the role of district and regional management is in many cases advisory only.³²

²⁹ The record shows that rewards for good work may be store-specific and, as stated in the store manager job description, the Employer encourages the store manager to create new ways to reward store employees.

³⁰ I note that the Employer did not provide evidence of specific instances in which the district manager, partner resources team or the regional director have intervened in a grievance. See *J & L. Plate*, 310 NLRB at 429 (to rebut single-facility presumption, employer required to introduce “affirmative evidence establishing lack of autonomy”).

³¹ There is also testimony concerning regular visitation by the district managers, human resources personnel and the regional director. However, the Employer has presented little evidence of what precisely happens during these visits between non-store management and non-management store employees.

³² The Employer cites cases where the Board found the single-store presumption rebutted in part because of supervisory autonomy; however, these are distinguishable from the facts here. In *Globe Furniture Rentals, Inc.*, 298 NLRB 288 (1990), the store managers only had “authority over routine day-to-day operations of the facilities” and there was evidence of significant mandatory employee interchange. In *Petrie Stores Corp.*, 266 NLRB 75 (1983), the store manager's authority was greatly “circumscribed” by the area supervisor's authority in personnel matters; the store manager had no involvement in, among other things, scheduling store employees, granting leave, vacation and any grievance handling. In *The Pep Boys*, 172 NLRB 246 (1968), the district manager had sole authority to determine all store personnel matters and involved himself “directly in the day-to-day operations of the store” and instructing employees in their work. In *Gray Drug Stores, Inc.*, 197 NLRB 924 (1972), the store manager had no independent authority regarding work or vacation schedules. In *V.I.M. Jeans*, 271 NLRB 1408 (1984), there was evidence that the stores were controlled “very closely” by central management and roving managers. The Employer also incorrectly relies on my decision and direction of election in *Mavis Tires Supply Corp.*, Case No. 2-RC-22815. In *Mavis*, the employer presented un rebutted evidence that central management maintains close control over personnel

Additional factors, which by themselves are not determinative, are insufficient here to rebut the single-unit presumption. There is no evidence of bargaining history between the parties which supports finding either a single- or multi-facility unit. As stated above, Employee's job descriptions and skills are uniform nationally.³³ There is also close geographic proximity among stores in light of the apparent nature of the Employer's business, which concentrates a good number of stores within New York City's five boroughs.

There are also regular voluntary temporary and permanent transfers among stores. However, the record revealed that the employee participates in the Employer's borrowed partner program fundamentally at the employee's discretion. The employee chooses if, when and where to work in order to gain extra money outside of his or her normal schedule, which is not affected by the transfer. The record testimony revealed that permanent transfers were also made to accommodate employee requests. I note that no evidence was introduced showing permanent transfers in and out of store 7356, and there is no specific evidence in the record of mandatory transfers apart from conclusory statements regarding transfers due to promotion or other unidentified reasons. The Board has long held that voluntary transfers and transfers for promotions, as distinct from mandatory transfers at the employer's behest, "are not entitled to much weight in determining the scope of the appropriate unit." *Renzetti's Markets*, 238 NLRB at 176; *Red Lobster*, 300 NLRB at 911.

The Employer's argument that its downtown New York City region is the only appropriate unit is also unpersuasive. It has been the Board's policy since its decision in *Sav-On Drugs*, 138 NL-RB 1032 (1962), that the administrative grouping of a retail chain is not determinative of a multi-facility unit, but is rather a factor to consider among all the circumstances of the case. *Haag Drug Company, Inc.*, 169 NLRB 877 (1968). Because I have determined that significant store supervisory autonomy supports a single-store unit presumption, I find it unnecessary to decide whether one of the Employer's administrative subdivisions constitutes an appropriate unit.³⁴

matters affecting store employees and that the employer gives no discretionary authority to store-level managers except in a few circumstances. By contrast, here the evidence reveals many and varied instances in which store managers act on personnel matters using the discretion which the Employer explicitly vests in them.

³³ Although the Employer's witnesses could not testify as to whether New York City employees may temporarily work in stores outside the New York City area, it is reasonable to conclude that this is possible, given that the Employer uses the same job descriptions, training program nationwide, and the Employer's equipment and facilities are the same or similar throughout the country.

³⁴ Although evidence of the Employer's regional community initiatives may show regional integration, it is not determinative. The record reveals that employee participation in these events is purely voluntary. See *Renzetti's Markets* at 175 (single-store unit found where integration evidence includes multi-store Christmas parties and social events). The Employer also argues that a regional unit is appropriate because the Petitioner during its campaign distributed handbills at several stores within the downtown New York City region. However, my decision that a single unit is appropriate is not controlled by the extent of the union's organizing; rather, it is based on long-settled community-of-interest criteria.

Supervisor Issue

Petitioner contends that the Employer's classification of shift supervisor is a supervisor as defined in the Act. Section 2(11) of the Act defines "supervisor" as follows:

any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

It is well established that Section 2(11) of the Act must be read in the disjunctive and that an individual therefore need only possess one of these powers for there to be a finding that such status exists. *Concourse Village, Inc.*, 278 NLRB 12, 13 (1985). However, the grant of authority must encompass the use of independent judgment on behalf of management. *Hydro Conduit Corp.* 254 NLRB 433, 441 (1981). The party seeking to exclude an individual as a supervisor bears the burden of establishing that such status, in fact, exists. *NLRB v. Kentucky River Community Care*, 523 U. S. 706 (2001); *Benchmark Mechanical Contractors, Inc.*, 327 NLRB 829 (1999). Mindful that a finding of a supervisory status removes an individual from the protection of the Act, the Board avoids attaching too broad a construction to Section 2(11). *Adco Electric, Inc.*, 307 NLRB 1113, 1120 (1992), enf'd. 6 F.3d 1110 (5th Cir. 1993). The Board has noted that, in enacting Section 2(11) of the Act, Congress stressed that only persons with "genuine management prerogatives" should be considered supervisors, as opposed to "straw bosses, leadmen . . . and other minor supervisory employees." *Chicago Metallic Corp.*, 273 NLRB 1677 (1985) (citing Senate Rep. No. 105, 80th Cong., 1st Sess., 4 (1947)), aff'd in relevant part 794 F.2d 527 (9th Cir. 1986). Thus, "whenever the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia." *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). Although not dispositive, secondary indicia of supervisory status may be examined, *Training School of Vineland*, 332 NLRB No. 152 (2000), and ostensible or apparent authority may be a basis for determining supervisory status. *Wolverine World Wide, Inc.*, 196 NLRB 410 (1972); *Poly-America, Inc.*, 328 NLRB 557 (1999).

Here, the Petitioner has not met its burden in proving the supervisory status of shift supervisors. The record shows that Employer's shift supervisors perform the same tasks as baristas, but with additional responsibilities of managing the flow of work, assuring that baristas are covering the appropriate stations, having access to the store's cash proceeds, recording information into the store's communication log, and overseeing the opening and closing of stores. However, these extra responsibilities, on balance, do not confer supervisory status on the shift supervisors.

The shift supervisors' duty to run the shift is generally routine in nature and does not require the level of independent judgment required to find supervisory status.

Supervisory status is not conferred upon the shift supervisor here because he or she, based on an assessment of work volume, directs where an employee should work and determines if employee breaks are feasible. See *Azusa Ranch Market*, 321 NLRB 811, 811-12 (1996) (no supervisory status for grocery store “key carriers” who decide, among other things, when breaks are taken and when to take employees off register to perform other store duties); *North Jersey Newspapers Co.*, 322 NLRB 394 (1996) (foreman’s routine rotation of employees based on common sense assessment of need not an exercise of independent judgment). There is also no specific evidence that Employer’s shift supervisors assign employees based on an independent assessment of skill level. See *Byers Engineering Corp.*, 324 NLRB 740, 741 (1997).

Similarly, the shift supervisor’s access to cash and store keys, and responsibilities to open and close store, do not warrant a supervisory finding. See *Azusa Ranch Market*, 321 NLRB at 811 (no supervisory status for grocery store key carrier who is in charge for two hours after manager leaves and locks up the store at night.)

Although a shift supervisor may report to the store manager on partner performance, the records does not reveal that the shift supervisor recommends (effectively or otherwise) reward or discipline. The evidence further shows that responsibility rests with store management to independently investigate policy infractions. See *Brown & Root, Inc.*, 314 NLRB 19, 21 n. 6 (1994) (reporting to management on quality of employee work does not confer supervisory status upon leadman); *Pepsi-Cola Bottling Co.*, 154 NLRB 490 (1965) (supervisory status not warranted where employee reported service deficiency for independent investigation by management).³⁵

I therefore cannot conclude that Employer’s shift supervisors are statutory supervisors, as Petitioner contends. Petitioner bases its argument for supervisory status on cases from the Second Circuit Court of Appeals which I find distinguishable. In *NLRB v. Quinnipiac College*, 256 F.3d 68 (2d Cir. 2001), the Court found evidence (lacking here) that the supervisors effectively recommended discipline and were held accountable for other employees’ performance. In *NLRB v. Porta Systems Corp.*, 625 F.2d 399 (2d Cir. 1980), the Court found supervisory status based on evidence that the leadpersons assign overtime based on an employee’s skills, may ask an employee to explain tardiness, and effectively recommends wage increases. In *Superior Bakery, Inc. v. NLRB*, 893 F.2d 493 (2d Cir. 1990), the Court upheld the ALJ’s finding that a supervisor, who “spent about 80% of his time . . . walking around the plant floor and overseeing production,” used independent judgment when assigning work and setting employees’ schedules. Here, as I concluded above, the shift supervisor does not exercise the requisite independent judgment while using a predetermined schedule.³⁶

³⁵ In any event, it is well settled that merely participating or assisting in an evaluation process or procedure does not confer supervisory status on the evaluator. *Elmhurst Extended Care Facilities*, 329 NLRB 535 (1999); *Harborside Healthcare, Inc.*, 330 NLRB 1334, 1335 (2000).

³⁶ Petitioner argues that certain secondary supervisory indicia confer supervisory status upon shift supervisors. However, such indicia cannot dispose of the issue absent evidence indicating the existence of one of the primary or statutory indications of supervisory status. See *Training School of Vineland*, 332 NLRB 1412 (2000); *Chrome Deposit Corp.*, 323 NLRB 961, 963 n.9 (1997). In any event, I note that the Board will not consider titles alone to be determinative of

Community-of-Interest Issue

Section 9(b) of the Act states that the “Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, or subdivision thereof.”

The Act does not require that a unit for bargaining be the only appropriate unit, the ultimate unit or the most appropriate unit. Rather the Act requires only that the unit be appropriate. The Board has held that in determining whether a petitioned-for unit is appropriate, the unit sought by the petitioning union is always a relevant consideration. *Lundy Packing Co.*, 314 NLRB 1042 (1994). If the petitioned-for unit is not appropriate, the Board may examine alternative units suggested by the parties or may select a different unit.

In determining whether employees possess a community of interest so as to constitute an appropriate unit, the Board examines factors such as mutuality of interest in wages, hours, and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration. It is well settled that the unit need only be an appropriate unit, not the most appropriate unit. *Bartlett Collins Company*, 334 NLRB No. 76, slip op. at 1 (2001). And, the Board generally tries to select a unit that is the smallest appropriate unit encompassing the petitioned-for employees. *Bartlett Collins Co.*, 334 NLRB No. (2001).

The evidence establishes that the shift supervisors and baristas work along side each other, perform many of the same tasks, are compensated in a similar fashion, are subject to the same supervision, receive the same benefits, and are subject to other similar terms and conditions of employment. I therefore conclude that the shift supervisors have a community of interest with the other petitioned-for baristas and accordingly should be included in the unit found to be appropriate herein.

Based upon the record, I find that the following unit³⁷ is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time baristas and shift supervisors employed by Starbucks Corporation d/b/a Starbucks Coffee Company Store 7356 located at 200 Madison Avenue, New York, New York.

supervisory status, *Marukyo U.S.A., Inc.*, 268 NLRB 1101 (1984), nor does the fact that an employee may be the highest ranking employee in the absence of management necessarily warrant a supervisory finding, *Training School of Vineland*, 332 NLRB at 1412. I also note that there is no specific evidence in the record pertaining the ratio of the store management to employees per shift.

³⁷ The unit found herein is larger than the petitioned-for unit by four employees. Petitioner indicated on the record that whether it would proceed to an election in a larger unit depended upon the unit found appropriate. Therefore, Petitioner must inform the Region within 7-days of the date hereof whether it will proceed to an election in this matter.

Excluded: All other employees, and professional employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director, Region 2, among the employees in the unit found appropriate at the time³⁸ and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations.³⁹ Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during the period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States who are in the unit may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.⁴⁰ Those eligible

³⁸ Pursuant to Section 102.21(d) of the Board's Statement of Procedure, absent a waiver, an election will normally be scheduled for a date or dates between the 25th and 30th day after the date of this Decision.

³⁹ Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer "at least three full working days prior to 12:01am on the day of the election." Section 103.20(a) of the Board's Rules. In addition, please be advised that the Board has held Section 103.20(c) of the Board's Rules requires that the Employer notify the Regional Office at least five full working days prior to 12:01am of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995).

⁴⁰ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *North Macon Health Care Facility*, 315 NLRB 359 (1994); *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman Gordon Company*, 394 U.S. 759 (1969). Accordingly, as Petitioner has a sufficient showing of interest in the unit found appropriate, it is hereby directed that within 7 days of the date of this Decision, 3 copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the Regional Director, Region 2, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office at the address below, on **July 7, 2004**. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list, except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

shall vote on whether or not they desire to be represented for collective-bargaining purposes by Industrial Workers of the World IU/660.⁴¹

Dated at New York, New York

June 30, 2004

/s/ _____
Celeste J. Mattina
Regional Director, Region 2
National Labor Relations Board
26 Federal Plaza, Rm. 3614
New York, New York 10278

⁴¹ Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 Fourteenth St., NW, Washington, DC 20570-0001. This request must be received by the Board in Washington by **July 14, 2004**.